

REMARKS

This is responsive to the Office Action mailed on June 28, 2004. In that Office Action, the Examiner allowed claims 83-91, 145-148, 153-156, 161, 164-170, 175-178, 183-192, 197-200, 205-214 and 216-222. The Examiner rejected claims 75, 79, 87, 115-118, 150-152, 158-160, 172-174, 180-182, 194-196, 202-204, 224-227, 230-236, 238-244, 246-251 and 256. The Examiner objected to claims 76-78, 80-82, 119-122, 142-144, 252-255 and 257-262. With this Amendment, claims 75, 78, 79 and 82 have been amended. Claims 76, 80, 150-152, 158-160, 172-174, 180-182, 194-196, 202-204, 216-218, 224-226, 251 and 258-262 have been canceled. The present application now includes claims 75, 77, 78, 79, 81-91, 115-122, 139, 142-148, 153-156, 161, 164-170, 175-178, 183, 186-192, 197-200, 205, 208-214, 219-222, 227, 230-236, 238-244, 246-250, 252-257.

In the Office Action, the Examiner rejected claims 75, 79, 150-152, 158-160, 172-174, 180-182, 194-196, 202-204 and 224-226 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner pointed out that claim 75 had a period and that the word "product" in claim 79 should have been "production". The period in claim 75 has been eliminated and claim 79 has been amended to include the word "production".

The Examiner also pointed out that a number of claims were dependent on a canceled claim. Specifically, these included claims 150-152, 158-160, 172-174, 180-182, 194-196, 202-204, 216, 218 and 224-226. However, applicant's attorney noticed that if these claims were amended to correctly depend from their independent claim they would have been duplicate claims of dependent claims already depending from that same independent claim. Therefore, all of these claims have been canceled.

In addition, applicant's attorney noticed that claim 258-262 have become duplicative claims due to amendments having been made to their respective independent claims. Therefore, these claims have also been canceled.

The Examiner then rejected claims 75, 87, 115-118, 227, 230-236, 238-244, 246-251 and 256 under the judicially created Doctrine of obviousness-type double patenting as being

unpatentable over claims 1-15 of U.S. Patent No. 6,440,447. The Examiner further stated that although the conflicting claims are not identical, they are not patentably distinct from each other and the rejection of record was being maintained. Applicant hereby provides an executed disclaimer signed by applicant's attorney. In view of this, it is respectfully requested that the obviousness-type double patenting rejection be withdrawn.


Finally, the Examiner rejected claims 75 and 79 under 35 U.S.C. § 102(b). Applicant has included the elements of objected to claim 76 into claim 75 and canceled claim 76 and objected to claim 80 into claim 79 and canceled claim 80. Claim 82 which depended from claim 80 has been amended to depend from claim 79. In view of the above amendments, it is believed that independent claim 75 and 79 are allowable over the prior art cited by the Examiner. Lastly, the Examiner's Office Action did not address claim 139. It is believed that claim 139 is allowable over the art of record. The claim recites that the sugar alcohol is either sorbitol, glycerol or xylitol and that the sugar alcohol is ruminally-protected. Since the above mentioned elements are elements common to the other allowed independent claims and in view of the executed terminal disclaimer being submitted, it is believed that claim 139 and its respective dependent claims are also allowable.

In view of the above, it is respectfully requested that all of the objected to and rejected claims in the present application be reconsidered and allowed.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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